

08-24-07

PTO/SB/21 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

AF
JFW**TRANSMITTAL
FORM**

to be used for all correspondence after initial filing)

Application Number	10/091,860		
	Filing Date	March 6, 2002	
	First Named Inventor	Stephen R. Cox, Thomas R. Quirk	
	Art Unit	3626	
	Examiner Name	Koppikar, Vivek D.	
Total Number of Pages in This Submission	23	Attorney Docket Number	358623.00100

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Doyle B. Johnson (Reg. No. 39,240) REED SMITH LLP
Signature	
Date	August 22, 2007

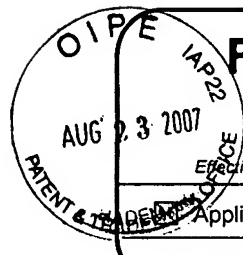
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Norma E. Gillespie		
Signature		Date	August 22, 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.74. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

500

Complete if Known

Application Number 10/091,860
 Filing Date March 6, 2002
 First Named Inventor Stephen R. Cox, Thomas R. Quirk.
 Examiner Name Koppikar, Vivek D.
 Art Unit 3626
 Attorney Docket No. 358623.00100

METHOD OF PAYMENT (check all that apply)

- ☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None
☒ Deposit Account

Deposit
Account
Number

50-2603

Deposit
Account
Name

REED SMITH LLP

The Director is authorized to: (check all that apply)

- ☒ Charge fee(s) indicated below ☒ Credit any overpayments
☐ Charge any additional fee(s) during the pendency of this application
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	200	2005	100	Provisional filing fee	
SUBTOTAL (1)					(\$)

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		**	=	0	X	50.	=	0
Independent Claims		**	=	0	X	200.	=	0
Multiple Dependent					X		=	0

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	50	2202	25	Claims in excess of 20	
1201	200	2201	100	Independent claims in excess of 3	
1203	360	2203	180	Multiple dependent claim, if not paid	
1204	200	2204	100	** Reissue independent claims over original patent	
1205	50	2205	25	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2)

0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	250
1402	500	2402	250	Filing a brief in support of an appeal	250
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	500	2452	250	Petition to revive - unavoidable	
1453	1,500	2453	750	Petition to revive - unintentional	
1501	1,400	2501	700	Utility issue fee (or reissue)	
1502	800	2502	400	Design issue fee	
1503	1,100	2503	550	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17 (q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$)

500

SUBMITTED BY

Complete (if applicable)

Name (Print/Type) Doyle B. Johnson
 Registration No. (Attorney/Agent) 39,240
 Telephone 415-659-5969
 Signature [Signature] Date August 22, 2007

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



Attorney's Docket No. 358623.00100

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In the application of:

Cox et al.

Serial No.: 10/091,860

Filed: March 6, 2002

For: SYSTEM FOR IMPROVING
LOGISTICS, TRACKING AND
BILLING FOR WORKER'S
COMPENSATION INSURANCE

Examiner: Koppikar, Vivek D.

Group Art Unit: 3626

APPELLANTS' BRIEF

APPEAL BRIEF

Board of Patent Appeals and Interferences
Mail Stop Appeal Brief Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Final Office Action dated May 24, 2007, finally
rejecting Claims 1 – 18, inclusive.

Real Parties in Interest

The inventors Steven R. Cox and Thomas R. Quirk are the real parties in interest.

08/24/2007 HVUONG1 00000057 502603 10091860

02 FC:2402 250.00 DA

Related Appeals and Interferences

There are no related appeals or interferences known to Appellants or the Appellants' legal representative, which will directly affect or be directly affected by or have a bearing on the Board's decision on this appeal.

Status of the Claims

Claims 1 – 18 are pending stand rejected. Specifically, Claims 1 – 5 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2002/0184055 (“Naghavi”), in view of U.S. Patent No. 6,057,764 (“Williams”), in further view of Japanese Patent No. 10-48008 (“Omron”), and in further view of U.S. Patent Application Pub. No. 2002/0111725 (“Burge”). Claims 6 – 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in view of Omron, in further view of U.S. Patent No. 6,604,080 (“Kern”). Claims 11 – 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Omron, in view of Williams, in view of Naghavi, in view of Kern, in view of Burge. Claims 15 – 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in further view of Omron, in further view of Burge, and even further in view of the Examiner's “Official Notice.” The rejection of Claims 1 – 18 is the subject of this Appeal.

Status of Amendments

No amendments after the final rejection have been filed.

Summary of Claimed Subject Matter

As disclosed in the Figures and described in the specification, the present claims are directed to a method and system that tracks the amount of time a worker spends in an area (i.e. liability zone) or areas of a workplace environment. By tracking the amount of time a worker spends in areas which may have different possible exposure levels for risk of injury, a fair assessment can be made as to the amount of worker's compensation insurance premium that should be paid for that worker's activities.

In more specific detail, the independent claims map to the specification and drawings as follows (citations to Figures and paragraph numbers in the published patent application - Patent Application Publication No. 2003/0171956):

1. A method for measuring risk exposure to a human in an environment, wherein the environment includes multiple areas, the method comprising: **[Figs. 1, 2, 3]**

detecting the presence of the human and tracking an amount of time the human is present in at least one area; and **[0011 – 0013; 0017 – 0022; 0028-0030; Figs. 1, 2, 3]**

using the amount of time to derive a measure of risk exposure to the human. **[0023 – 0027; 0031]**

10. An apparatus for obtaining data to determine an insurance premium, the apparatus comprising: **[Figs. 1, 2, 3]**

at least one sensor for determining the presence of a human in an at least one area; **[0017 – 0020; 0029 – 0030; Figs. 1, 2, 3]**

and a processor for receiving a signal from the sensor to indicate the presence of a human, and for tracking an amount of time the human is present in the at least one area, **[0012; 0017 – 0020; 0023; 0029 – 0030; Figs. 2, 3]**

wherein one or more processors receive data derived from the signal to determine, at least in part, an insurance premium. **[0026 – 0031]**

11. A method for determining an insurance premium for a worker in an environment, the method comprising: **[Figs. 1, 2, 3]**

defining at least one liability zone within the environment; **[0021 – 0023; Fig. 1]**

detecting a worker's presence in the at least one liability zone, and tracking an amount of time the worker spends in the at least one liability zone; and **[0011 – 0013; 0017 – 0022; 0028 – 0030; Figs. 1, 2, 3]**

calculating an insurance premium based at least in part on the amount of time the worker spends in the at least one liability zone. **[0026 – 0031]**

14. A system for determining a worker's compensation insurance premium, wherein a work environment has at least one liability zone, the system comprising: **(Figs. 1, 2, 3)**

at least one sensor to detect a presence of a worker in the at least one liability zone; and [0017 – 0023; 0029 – 0030; Fig. 1]

a processor for tracking an amount of time the worker is present in the at least one liability zone, based on input from the at least one sensor; [0012; 0017 – 0020; 0023; 0029 – 0030; Figs. 2, 3]

wherein the amount of time the worker is present in the at least one liability zone is used at least in part to calculate a worker's compensation insurance premium for the worker. [0026 – 0031]

These mappings are illustrative only, and are provided as required, but are not intended to limit the scope or content of the claims beyond the specific language of the claims. In addition, other portions of the specification and drawings may provide similar support for the claims as well.

Grounds of Rejection to be Reviewed on Appeal

The rejections of Claims 1 – 5 and 10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2002/0184055 (“Naghavi”), in view of U.S. Patent No. 6,057,764 (“Williams”), in further view of Japanese Patent No. 10-48008 (“Omron”), and in further view of U.S. Patent Application Publ No. 2002/0111725 (“Burge”); Claims 6 – 9 under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in view of Omron, in further view of U.S. Patent No. 6,604,080 (“Kern”); Claims 11 – 14 under 35 U.S.C. 103(a) as being unpatentable over Omron, in view of Williams, in view of Naghavi, in view of Kern, in view of Burge; Claims 15 – 18 under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in further view of Omron, in further view of Burge, and even further in view of the Examiner's “Official Notice” are respectfully traversed. The combination of the cited references fails to support the rejection of the pending claims.

Argument

I. Procedural Background

The Applicants filed the present application on March 6, 2002. The application as filed had 10 claims, with Claims 1 and 10 independent. In a first Office Action dated April 7, 2006, Claims 1 – 10 were rejected. Specifically, Claims 1 – 5 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2002/0184055 (“Naghavi”), in view of U.S. Patent No. 6,057,764 (“Williams”). Claims 6 – 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi in view of Williams, in further view of U.S. Patent No. 6,604,080 (“Kern”).

In a response dated June 29, 2006, the Applicants amended Claims 1, and 6 – 10, added new Claims 11 – 14, and argued against the rejection of the claims in view of the cited prior art.

A Final Office Action was mailed on Aug. 10, 2006 rejecting the pending Claims 1 – 14. Claims 1 – 5 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in further view of Japanese Patent No. 10-48008 (“Omron”). Claims 6 – 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi in view of Williams, in further view of Kern, and Omron. Claims 11 – 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Omron, in view of Williams, in view of Naghavi, in view of Kern. [Note that the Final Office Action basically just added the Omron and Kern references to the previously cited references.]

In response to the Final Office Action, the Applicants filed on Sept. 22, 2006 a “PRE-APPEAL REQUEST FOR REVIEW”, which argued that the combination of cited

references did not support the rejection of the pending claims. In a “Notice of Panel Decision from Pre-Appeal Brief Review”, the rejection was withdrawn.

As a result of the Panel Decision, a new, non-final Office Action was mailed on Jan. 9, 2007. Claims 1 – 14 were still pending, and the Office Action rejected all claims. Basically, the Examiner added the “Burge” reference to the previously cited combinations of prior art. Specifically, Specifically, Claims 1 – 5 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in further view of Omron, and in further view of U.S. Patent Application Pub. No. 2002/0111725 (“Burge”). Claims 6 – 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in view of Omron, in further view of Kern. Claims 11 – 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Omron, in view of Williams, in view of Naghavi, in view of Kern, in view of Burge.

On April 5, 2007, the Applicants filed a response to the non-final Office Action and added new Claims 15 – 18, and argued against the rejection of the pending claims in view of the cited combinations of prior art. On May 24, 2007 a Final Office Action was issued upholding the previous rejections of Claims 1 – 14, and also rejecting the added Claims 15 – 18.

The Applicants wish to specifically point out that the Examiner has used the same previous references that were deemed insufficient to support a rejection by the pre-appeal review panel, and has merely added an additional fifth reference (Burge). However, as has been argued previously, these references, either alone or combination, do not fairly disclose the present invention as claimed, and the

addition of the Burge reference does nothing to support the contention that the present claims are obvious in view of the prior art.

II. The rejection of Claims 1 – 5 and 10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Pub. No. 2002/0184055 (“Naghavi”), in view of U.S. Patent No. 6,057,764 (“Williams”), in further view of Japanese Patent No. 10-48008 (“Omron”), and in further view of U.S. Patent Application Publ No. 2002/0111725 (“Burge”)

The present claims are directed to a method and system that tracks the amount of time a worker spends in an area (i.e. liability zone) or areas of a workplace environment. By tracking the amount of time a worker spends in areas which may have different possible exposure levels for risk of injury, a fair assessment can be made as to the amount of worker’s compensation premium that should be paid for that worker’s activities.

As discussed below, there is no disclosure in the cited prior art of such a method and system. Even assuming the disparate elements could be found in the cited prior art (which the Applicants contend they cannot), the Examiner has failed to establish any reasonable basis for finding any motivation in the prior art to make such a combination from the completely unrelated prior art references. The Office Action is based entirely on hind-sight reconstruction using the Applicants’ teachings and claims as a guide. The Federal Circuit has repeatedly held such a rejection is improper.

The Applicants are also aware of the recent U.S. Supreme Court decision in *KSR v. Teleflex*, holding that the combinations of known elements can be found to be obvious, where there is no inventive skill required to make the combination. The *KSR* decision effectively weakened the prior “Teaching, Suggestion, Motivation” (TSM) standard. However, nothing in this decision appears to overturn the long-standing rule prohibiting

hind-sight reconstruction. In other words, using the Applicants' own teachings and claims as a guide to combine random elements found in the prior art is still prohibited. Significantly, in the present case, the Office Action has combined four references in order to attempt to make a *prima facie* case of obviousness. Such a combination is improper, and fails to disclose the present invention in any case.

As understood by the Applicants, Naghavi merely discloses a proprietary healthcare operating system for a PC specifically adapted to interface with medical devices connected to a PC. Naghavi does not disclose detecting a human in an environment, nor does Naghavi disclose tracking an amount of time the human spends in any particular area in the environment in order to determine a measure of risk exposure or an insurance premium. Moreover, the Applicants contend that this reference is not even relevant art, since it is not directed to solving the same or similar problem, and has no mention whatsoever of tracking workers for determining an insurance premium.

Williams discloses an alarm system whereby a detected person may have a personal device that transmits an authorization code to prevent the alarm system from activating. As with Naghavi, Williams does not disclose any system or method for tracking an amount of time a person spends in different areas, nor that this time information is used to determine a measure of risk or assessment or to calculate an insurance premium. As with Naghavi, Williams does not teach or disclose that a measure of risk or an insurance premium may be based on an amount of time a worker spends in a predefined area (liability zone).

Kern discloses a computer system used to calculate worker's compensation insurance rates. As understood by the Applicants, this system is merely a standard

computer system used to calculate insurance rates and premiums, and is not directed to any new methodology for calculating worker's compensation insurance premiums based upon an amount of time a worker is in various liability zones.

These three references were initially cited in the first Office Action as supporting the rejection of the claims. Realizing that none of these three references even mention tracking an amount of time a worker spends in an area in order to calculate an insurance premium, the first Final Office Action added the Omron reference.

However, Omron is similarly deficient. As understood by the Applicants, Omron appears to disclose a system that determines how long a person stays near an exhibit or store display. Omron does not disclose tracking a person in an area in order to make a risk assessment or calculate an insurance premium. This specific limitation is completely absent from the cited prior art references. In the "Response to Arguments" in the Final Office Action, the Examiner states: "Applicants argue that the prior art does not teach the step of tracking a person in an area in order to make a risk assessment or calculate an insurance premium. However, as pointed out in the rejection of Claim 1, above, the Omron reference teaches this feature (Abstract)."

This is a false statement. Nothing in Omron teaches or suggests tracking the amount of time a person is in an area in order to make a risk assessment or calculate an insurance premium. The English Abstract of Omron provided by the Examiner states:

The device includes an image pick up unit which picks up the image of predetermined measurement range of certain area. An extraction unit (5) extracts the image of a person within the picked up image. A tracking unit (6) tracks the image of person extracted from the picked up image. A staying time measurement unit measures the time period for which the person stays within the measurement range. Based on the measured time period, a judging unit (7) judges the presence of the person within the predetermined measurement range.

Clearly, there is no mention of tracking an amount of time a person spends in area to determine a risk assessment or calculate an insurance premium.

The pre-appeal review panel agreed with the Applicants that the above four-noted references failed to support a prima facie case of obviousness. The addition of the Burge reference does nothing to overcome the shortcomings of the prior references.

Specifically, as understood by the Applicants, Burge discloses a computer system for tracking various operational characteristics of an automobile. Various sensors are used to track data relating to the operation of the vehicle. The data may then used to set automobile insurance rates.

However, as implicitly acknowledged in the Office Action, Burge fails to disclose the tracking of a worker in different liability zones to determine a worker's compensation rate. One of skill in the art reading Burge, in combination with any or all of the other four references, would not come to understand that a system to track worker's in different zones is even desirable, much less feasible. The ONLY motivation to even consider reading the five cited references in view the present claims is to use the present claims as a "road map" to the individual elements in the prior art. The Federal Circuit has consistently held that such hindsight reconstruction is improper.

Specifically referring the claim language, Claim 1 requires "using the amount of time to derive a measure of risk exposure to the human." Neither Naghavi, Williams, Omron or Burge teach or suggest this element. Moreover, it appears the Examiner has misapplied Williams, since the Office Action citations to Williams are merely to discussion of an alarm system that monitors individuals entering a building, etc. but has no mention of using this information to derive a measure of risk exposure. Similarly,

while Burge does disclose various possible sensor types, it does not disclose that the concept of different “liability zones” as specifically required by the present claims. Most importantly, Burge does not disclose tracking an amount of time a worker spends in a particular liability zone, in order to calculate an insurance premium.

Similarly, independent Claim 10 requires “tracking an amount of time the human is present in the at least one area” in order to calculate an insurance premium. The combination of cited references fails to disclose this specific claim element.

Dependent Claims 2 – 5 are allowable for at least the reasons noted above with respect to Claim 1.

III. The rejection of Claims 6 – 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in view of Omron, in further view of U.S. Patent No. 6,604,080 (“Kern”)

Dependent Claims 6 – 9 are allowable for at least the reasons noted above with respect to Claim 1. Moreover, none of the cited references specifically teaches using the amount of time a worker spends in different areas to calculate a worker’s compensation insurance premium. Thus, these claims are allowable for at least this additional reason.

IV. The rejection of Claims 11 – 14 under 35 U.S.C. 103(a) as being unpatentable over Omron, in view of Williams, in view of Naghavi, in view of Kern, in view of Burge

The Examiner has rejected independent Claims 11 and 14 as being obvious in view of a combination of five references. Significantly, none of the cited references discloses any system or technique for tracking an amount of time a worker spends in

different areas in order to calculate an insurance premium. For the reasons advanced above with respect to Claim 1, Claims 11 and 14 are similarly allowable.

Specifically, Claim 11 requires “detecting a worker’s presence in the at least one liability zone, and tracking an amount of time the worker spends in the at least one liability zone; and calculating an insurance premium based at least in part on the amount of time the worker spends in the at least one liability zone.” As discussed above, these limitations are absent from the proposed combination of references.

Claims 14 requires “a processor for tracking an amount of time the worker is present in the at least one liability zone, based on input from the at least one sensor; wherein the amount of time the worker is present in the at least one liability zone is used at least in part to calculate a worker’s compensation insurance premium for the worker.” Again, these limitations are not present in the cited combination of prior art.

Moreover, it is unclear how one of skill in the art could even combine these five disparate references and form the present invention, since the most basic point – tracking the amount of time a worker spends in different liability areas in order to calculate an insurance premium– is not taught or suggested by any of the references. In summary, the five cited references, either individually or taken as group, do not reasonably disclose to one of skill in the art that an insurance premium can be calculated based upon tracking an amount of time a worker spends in at least one area (liability zone). For at least this reason, it is believed that the present claims are now in condition for allowance.

Furthermore, the five references appear to be so unrelated that it is unreasonable to presume that one of skill in the art would even look to these five references in order to form the present invention (Naghavi discloses a healthcare operating system; Williams

discloses an alarm system; Kern discloses a computer system to calculate insurance rates; Omron discloses a system for monitoring customers at product displays; and Burge a vehicle computer sensor system).

As stated by the Federal Circuit in *In re Clay*, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992):

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, and (2) if the reference is not within the same field of endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved....A reference is reasonably pertinent if....it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem...If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, ...[i]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.

In this case, the cited references are not even in the field of method or systems for calculating insurance based on physical factors, such as a presence in defined zones. As such, an inventor would hardly have considered them when constructing a system such as the present system.

Additionally, none of these references provide any motivation for the hypothetical combination now proposed by the Examiner, and it appears that the Examiner is merely using the teachings of the present invention to select elements from disparate documents – i.e. is engaging in impermissible “hindsight reconstruction.”

As noted above, however, there is no basis supplied in the prior art which would motivate someone to make this combination, since the references are not even directed to solving the same or similar problem. Moreover, this combination fails in any event, since none of the cited documents disclose tracking an amount of time a person spends in an area in order to calculate an insurance premium.

While there is no bright line as to how many references are “too many” for purposes of supporting an obviousness rejection, the mere fact that the Office Actions has to rely on five different references tends to indicate that the prior art does not reasonably suggest the present invention to one of skill in the art.

Dependent Claims 12 – 13 are allowable for at least the reasons noted above with respect to Claim 11.

V. The rejection of Claims 15 – 18 under 35 U.S.C. 103(a) as being unpatentable over Naghavi, in view of Williams, in further view of Omron, in further view of Burge, and even further in view of the Examiner’s “Official Notice”

These dependent claims are allowable for at least the reasons advanced above with respect to the independent claims.

Conclusion

The Examiner’s rejection is clearly erroneous and should be reversed.

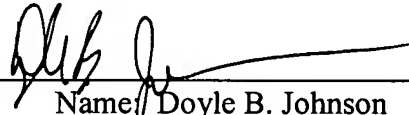
The Commissioner is hereby authorized to charge any fees (or credit any overpayment) associated with this communication and which may be required under 37 CFR §1.78 to Deposit Account No. 50-2603, **referencing Attorney Docket No. 358623.00100. This document is submitted in duplicate.**

Respectfully submitted,

REED SMITH LLP

Dated: August 22, 2007

By: _____



Name: Doyle B. Johnson
Registration No. 39,240
Attorneys for Appellants

Two Embarcadero Center, Suite 2000
P.O. Box 7936
San Francisco, CA 94120-7936
Direct Dial (415) 659-5911
(415) 543-8700 Telephone
(415) 391-8269 Facsimile

Appendix (Claims)

1. A method for measuring risk exposure to a human in an environment, wherein the environment includes multiple areas, the method comprising:

detecting the presence of the human and tracking an amount of time the human is present in at least one area; and

using the amount of time to derive a measure of risk exposure to the human.

2. The method of claim 1, wherein the step of detecting includes a substep of using a sensor to detect the presence of the human in an area.

3. The method of claim 2, wherein the step of detecting includes using a radio-frequency identification badge.

4. The method of claim 2, wherein the step of detecting includes using a card reader.

5. The method of claim 1, wherein the step of detecting includes a substep of associating an identification of the human with the detection.

6. The method of claim 1, further comprising using the measure of risk exposure in a worker's compensation program.

7. The method of claim 6, further comprising using at least a portion of the measure of risk exposure to determine premiums to be paid by an employer.

8. The method of claim 6, further comprising using at least a portion of the measure of risk exposure to determine benefit payments to be made by an insurer.

9. The method of claim 6, further comprising using at least a portion of the measure of risk exposure to determine projections for the worker's compensation program.

10. An apparatus for obtaining data to determine an insurance premium, the apparatus comprising:

at least one sensor for determining the presence of a human in an at least one area;

and a processor for receiving a signal from the sensor to indicate the presence of a human, and for tracking an amount of time the human is present in the at least one area,

wherein one or more processors receive data derived from the signal to determine, at least in part, an insurance premium.

11. A method for determining an insurance premium for a worker in an environment, the method comprising:

defining at least one liability zone within the environment;

detecting a worker's presence in the at least one liability zone, and tracking an amount of time the worker spends in the at least one liability zone; and

calculating an insurance premium based at least in part on the amount of time the worker spends in the at least one liability zone.

12. The method of claim 11, wherein at least two different liability zones are defined, and wherein the different liability zones have different hazard levels.

13. The method of claim 12, wherein an amount of time the worker spends in each liability zone is separately tracked and used to calculate an insurance premium.

14. A system for determining a worker's compensation insurance premium, wherein a work environment has at least one liability zone, the system comprising:

at least one sensor to detect a presence of a worker in the at least one liability zone; and

a processor for tracking an amount of time the worker is present in the at least one liability zone, based on input from the at least one sensor;

wherein the amount of time the worker is present in the at least one liability zone is used at least in part to calculate a worker's compensation insurance premium for the worker.

15. The method of Claim 1, further comprising:

detecting the presence of the human and tracking an amount of time the human is present in a plurality of areas; and

using an amount of time the human is in each of the plurality of areas to derive a measure of risk exposure to the human.

16. The method of Claim 15, wherein an insurance premium is calculated based on an amount of time spent in each zone and an amount of liability premium associated with each zone.

17. The system of Claim 14, wherein the work environment has a plurality of liability zones, and the processor for tracks an amount of time the worker is present in each of the liability zones, and wherein the amount of time the worker is present in the

plurality of liability zones is used at least in part to calculate a worker's compensation insurance premium for the worker.

18. The system of Claim 17, wherein each of the plurality of liability zones has its own associated insurance premium, based on a risk level in each zone.

Evidence Appendix

Attached hereto is a true and correct copy of U.S. Patent Application Pub. No. 2002/0184055 ("Naghavi"); U.S. Patent No. 6,057,764 ("Williams"); Japanese Patent No. 10-48008 ("Omron"); U.S. Patent Application Pub. No. 2002/0111725 ("Burge"); and U.S. Patent No. 6,604,080 ("Kern").

Related Proceedings Appendix

Not applicable.



Docket Number: 351778.04700

Certificate Of Mailing Under 37 CFR §1.8

I hereby certify that the enclosed document(s) are being deposited with the United States Postal Service on this date August 22, 2007 in an envelope bearing "Express Mail Post Office To Addressee" Mailing Label Number **EV398797704US** addressed to: Commissioner For Patents, Alexandria, VA 22313-1450.

August 22, 2007

Date

Norma E. Gillespie

Name of Person Mailing Paper

Norma E. Gillespie

Signature